

In the Matter of)
)
 Amendment of Part 74 of the Commission's) MB Docket No. 18-119
 Rules Regarding FM Translator Interference)
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REPLY COMMENTS OF AZTEC CAPITAL PARTNERS, INC.

I. INTRODUCTION

¹ Aztec Capital Partners, Inc. is the licensee of WHAT(AM), WNWR(AM) and W260CZ, Philadelphia.

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for listener complaints as an equitable and a legally-supportable Commission compromise.

II. ARGUING AGAINST THE 54 dB μ LIMITATION PROVES TOO MUCH

2. A number of commenters argue for an interference limitation beyond the FCC NPRM proposed 54 dB μ contour and in many cases no limitation at all.³ Integral in each opposition to the NPRM proposed 54 dB μ contour is an argument that FM stations have discernable audiences outside of their predicted 54 dB μ contour.

3. This argument of FM station audiences outside of the 54 dB μ contour proves too much. In attempting to protect audiences well outside of FM stations' protected contours, these commenters attack the very foundational scheme of the FCC's allotment and assignment structures for the FM band.

4. One commenter elegantly noted:

There are those who would seek protection of the 50 dB μ or even the 40 dB μ contour claiming listening far beyond the service areas assigned for their facilities. *Such claims are mindful of the cattle barons of the old west who wanted to preserve grazing rights on all open land rather than permit settlers to erect fences to establish farms and homesteads.* FM translators, especially those preserving and expanding the local service provided by heritage AM stations, are

³ See Comments of Alan Bishop and Blue Ridge Broadcasting Corporation arguing for a 48 dB μ contour; Comments of Grace Co. Broadcasters Incorporated arguing for a 38 dB μ contour; Comments of Educational Media Foundation arguing for a 39 dB μ contour; Comments of Plymouth Rock Broadcasting Co., Inc. arguing for a 40 dB μ contour; Comments of the New Jersey Broadcasters Association arguing for a 45 dB μ contour; Comments of WJFD-FM, Inc. arguing for a 34 dB μ contour; and Comments of Beaver Springs Faith Baptist Church, New York Public Radio, National Public Radio, Inc., Linda C. Corso, Beasley Media Group, LLC *et.al* and Delmar Communications, Inc. arguing for no limit.

analogous RF homesteads using the wide open spectrum spaces to provide new and important local services (emphasis added).⁴

5. The anti-54 dB μ *cattle barons*, while addressing only FM translators in their comments, leave unsaid that every other FM assignment and allocation rule gives them no protection whatsoever beyond their own 60 dB μ contour (for all but Class Bs and Class B1s for which the protected contour is 57 dB μ and 54 dB μ respectively). These commenters in arguing against the NPRM-proposed 54 dB μ contour limitation are implicitly arguing that any FM upgrade, power increase or move is highly contrary to the public interest. Any such move in which either Section 73.207 distance separations, or Section 73.215(e) contour spacings are invoked, will certainly cause interference to listeners beyond the protected contours of many FM stations.

6. The FCC long ago decided that there was to be a protected FM contour under its licensing rules. The only FM contour in the FCC's rules for which there is any semblance of legal and technical support for protection is the 60 dB μ contour for all but Class B and B1 stations. While various commenters observe unremarkably that existing FM stations have listeners beyond the predicted 54 dB μ contour, in that *open land* beyond the 54 dB μ contour, such listeners are distant from the station's city of license, the station's service area, and the local core of the station's coverage.

⁴ Comments of Charles M. Anderson at Page 2.

7. In making changes under the NPRM, the FCC, above all, must protect local listeners of both existing FM stations and FM translator stations. Silencing an FM translator is an affront to the FCC's public interest goal of providing consistent and reliable radio signals to *local* listeners, as much as an FM translator interfering with the *local* audience of an existing station is against the public interest. The NPRM's specification of an existing station's 54 dBμ contour for cognizable interference complaints is a reasonable compromise that serves local radio listeners of both full-power and FM translator stations.

8. As Aztec noted in its Comments, in a full-circle perversion of the FCC's 1990 intentions in addressing the "Flagstaff situation"⁵, today distant full-service stations are fostering the filing of complaints far outside of their communities of license and service areas against FM translators that are enabling the reception of local AM radio stations and local diverse HD sub-channels. The result is that distant out-of-market stations are driving FM translators carrying local radio stations off the air.

III. PLAINTIVE PLEAS FOR GOVERNMENTAL PROTECTIONS

9. Those who argue for interference-limitation contours beyond the 54 dBμ contour, or no limitation at all, have a certain mournful quality to them. They argue not so much that they are entitled to these listeners (as noted above, a full-service station power increase, upgrade or move could obliterate the whole of such

⁵ 1990 FM Translator Report and Order, 5 FCC Rcd at 7216.

listeners), nor that these listeners are *local* listeners, but rather that because the listeners may happen to be there, those listeners must be protected.

10. One commenter states that it has “experienced co-channel interference complaints from regular listeners of its stations where Longley-Rice methods show localized signal strengths as low as 20 to 30 dBμ”.⁶ Indeed, if there was ever a disguised argument for the “owners contour”, this is it, where a radio station owner is pleading with the Federal government to offer it regulatory and business protections to the last gasps of signal to which it is demonstrably not entitled.⁷

11. Stripping the arguments to their essence, those opposing the FCC’s reasonable compromise of a 54 dBμ limitation on interference complaints really ask for governmental protection to service areas they are not entitled to, with FCC regulatory processes preserving their *grazing rights*⁸ against newcomers and other users of spectrum.

12. One commenter was unusually candid in asking for such governmental protections:

We are disheartened that this Republican Commission seems to have little use for these market forces and for free markets [as the NPRM rule changes as proposed

⁶ Educational Media Foundation Comments at Page 12.

⁷ See Comments of Aztec regarding the “owners contour” at Page 11, Paragraph 23. For those that argue that the FCC’s rules require that existing stations must be protected no matter what and no matter where from FM translators, those commenters lose sight of this being a “rulemaking” proceeding in which changes to the FCC’s rules are being considered – not a rule-*keeping* proceeding in which the subject FCC’s rules are inviolable and the only thing being discussed is how to better implement those rules.

⁸ See Paragraph 4 above.

coupled with AM revitalization] will come at the expense of companies like ours who have invested everything we have in FM radio and who now see that investment threatened.⁹

In other words, please, please, Federal government, protect my existing business and revenue even though it is predicated upon FM coverage I was never entitled to. Other commenters seek protection expressing similar begging and catastrophic sentiments.¹⁰

13. The Beasley Media Group, LLC *et.al* Comments perhaps deserve the most notice on this aspect of protecting grazing rights. Assuming that the data it presents is true, then the FCC should be shocked that it presently does not have before it thousands upon thousands of interference complaints.

14. Indeed, if every radio station has the purported out-of-contour listening claimed by the Beasley Media Group, LLC *et.al* Comments, then every move, upgrade or power increase of an existing FM station causes massive interference to existing radio listeners given that only listening to the 60 dB μ ¹¹ is protected by the spacings in Section 73.207 and the contour-overlaps in Section 73.215(e) of the Commission's rules. That this massive interference does not happen with ordinary FM station moves, upgrades and power increases calls into

⁹ Grant Co. Broadcasters Incorporated in its Comments at unnumbered Page 7.

¹⁰ Delmar Communications, Inc. in its Comments at Page 2 notes at that if the NPRM proposals are adopted, "the demise of the FM radio service will occur". Beasley Media Group, LLC *et. al* states in its Comments at Page i that "the 54 dB μ limit ... would fundamentally change the existing balance of equities between translators and other broadcast stations and affect the listening options for listeners outside the other broadcast station's protected contour to the detriment of the public *and full-service FM stations...*(emphasis added)".

¹¹ Except for Class B1 and Class B FM station in which the protections are 57 dB μ and 54 dB μ respectively.

question whether Beasley Media Group, LLC *et.al* has too creatively used its audience data to its own purposes.

15. But more to the point, this proceeding is not about how many listeners a radio station may have in unprotected signal areas far distant from its transmitter site, community of license and market area. Rather, this proceeding is about balancing such distant listening with the service provided by FM translators.

16. As noted in the Aztec Comments, with the exception of FM translators, the local radio listener and the public interest remain well served by the Section 307(b) local service considerations embodied in the Communications Act of 1934, as amended. For FM translators, however, the FCC has allowed distant listeners to remove local radio service from local listeners.

IV. CONCLUSION

17. Distant radio listening that removes local service from FM translators is a perversion of the “fair, efficient, and equitable distribution” provisions of Section 307(b) of the Communications Act. FM stations are authorized by the FCC under Section 307(b) to serve a community of license and a discrete service area encompassed by the FM station’s licensed predicted contour.

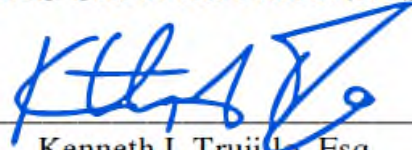
18. Removing local FM translator service from local listeners based upon alleged interference to a distant FM station’s listeners outside the NPRM’s compromise 54 dBμ contour unfairly, inefficiently and inequitably, contrary to Section 307(b), favors the extension of a distant station’s weak signal to vast areas, disfavoring local FM translator listeners. This is the antithesis of Section

307(b) localism. Therefore, irrespective of the not-unexpected showing made by some commenters of radio listeners outside of the proposed compromise 54 dB μ contour, the FCC should follow through with the adoption its proposed NPRM 54 dB μ contour limitation on FM translator complaints.

Respectfully submitted,

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